HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 3509/01 (M/S)
(Old No. 22807/1996)

Smt. Rajeshwari Kandari

Vs.

R.C.&.E.O. Mussoorie & another

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 24/8/04

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 3509 of 2001 (MS)
(Old No. 22807/1996)

Smt. Rajeshwari Kandari ..... Petitioner

Versus

Rent Control & Eviction Officer,Mussoorie & another ..... Respondents

Tanuj Semwal, Advocate for the petitioner.
Sri Suresh Agarwal, Advocate for the respondents.

Dated:- 24.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition, the petitioner has challenged the order dated 19.7.1996 passed by the Rent Control and Eviction Officer, Mussoorie.

Briefly stated the facts giving rise to the present writ petition are that on 20.12.1968 premises No. 235/2 Landour Bazar was allotted in favour of the petitioner by the R.C. & E.O. Mussoorie. The husband of the petitioner Sri Bachan Singh was having two wives. His another wife Smt. Purni Devi was living in the village with her children. The petitioner was living with her husband along with his children in the disputed property. The petitioner has submitted that her husband died on 16th August 1987. In the year 1993 Smt. Purni Devi have taken an

accommodation in the Ganesh Housing Cooperative Society Mussoorie. On 7.7.1994, the landlord has given notice of vacancy on the ground tha the petitioner had occupied accommodation in Ganesh Housing Society and as such the premises in question is vacant. On 24th August 1994, the Rent Control Inspector had inspected the premises in dispute and submitted his report. Affidavits have been filed by the landlord that there is deemed vacancy under section 12 of the U.P. Act No. XIII of 1972. The R.C. & E.O. has declared vacancy vide order dated 26.6.1996 against which the present writ petition hs been filed.

Section 12 (3) of U.P. Act No. 13 of 1972 reads as under:

(3) In the case of a residential building, if he tenant or any member of this family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situated, he shall be deemed to have ceased to occupy the building under his tenancy:

The R.C. & E.O. has recorded finding that the husband of the petitioner has purchased a flat and as such deemed vacancy under section 12 (3) shall take place. In view of the aforesaid fact the accommodation shall be deemed to be vacant.

Deemed vacancy under Section 12 (3) of the U.P. Act NO. XIII of 1972 has been interpreted by the Apex Court in the case Harish Tandon vs. Addl. District Magistrate, Allahabad (1995) 1 SCC 537. The Apex Court has held as under:

"2. *On behalf of the respondents, it was urged that the expression 'deemed' occurring in sub-sections (2) and (4) of Section 12 as well as in the Explanation (i) of Section 25 should not be read as conclusive. It should be read as "deemed until the*

contrary is proved". Reference was made to the cases Gray v. Kerslake[1]; Robert Batcheller & Sons Ltd. v. Batcheller[2] and Spencer v. Kennedy[3] where it was observed that if the word 'deemed' is held to be conclusive, then it shall amount to imputing to the legislature the intention of requiring the court to hold as a fact something directly contrary to the true fact. It was also said that such deemed clauses should be read to mean as required by the statue, until the contrary is proved.

13. *The role of a provision in a statue creating legal fiction is by now well settled. When a statue creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the court has to examine and ascertain as to for what purpose and between what persons such a statutory fiction is to be resorted to. Thereafter full effect has to be given to statutory fiction and it has to be carried to its logical conclusion. In the well-known case of East End Dwellings Co. Ltd. v. Finsbury Borough Council[4] Lord Asquith while dealing with the provisions of the Town and Country Planning Act, 1947, observed:*

> *"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it. … The statue says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

That statement of law in respect of a statutory fiction is being consistently followed by this Court. References in this connection may be made to the case of State of Bombay v. Pandurang Vinayak[5]. From the facts of that case it shall appear that

Bombay Buildings (Control on Erection) Ordinance, 1948 which was applicable to certain areas mentioned in the schedule to it, was extended by a notification to all the areas in the province in respect of buildings intended to be used for the purposes of cinemas. The Ordinance was repealed and replaced by an Act which again extended to areas mentioned in the schedule with power under sub-section (3) of Section 1 to extend its operation to other areas. This Court held that the deemed clause in Section 15 of the Act read with Section 25 of the Bombay General Clauses Act has to be given full effect and the expression 'enactment' in the Act will cover the word 'Ordinance' occurring in the notification which had been issued. In that connection it was said:

> *"The corollary thus of declaring the provisions of Section 25, Bombay General Clauses Act, applicable to the repeal of the ordinance and of deeming that ordinance an enactment is that wherever the word 'ordinance' occurs in the notification, that words has to be read as an enactment."*

In view of the facts that the husband of the petitioner having purchased a house within the Municipal Limits of Mussoorie, there is no error in the order passed by the R.C.& E.O. Therefore, no interference is required under Article 226/227 of the Constitution of India.

Consequently the writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

24.8.2004

*Dhyani